

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 536**

FINAL READING

(SECOND)

Introduced by Dierks, 40; Cudaback, 36; Cunningham, 18;  
Schrock, 38; Vrtiska, 1

Read first time January 11, 2001

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend section 66-1330, Reissue  
2 Revised Statutes of Nebraska, and sections 66-1344 to  
3 66-1345.02 and 66-1345.04, Revised Statutes Supplement,  
4 2000; to create and change provisions relating to  
5 production incentives; to impose excise taxes; to require  
6 a written agreement and a report; to state intent; to  
7 harmonize provisions; and to repeal the original  
8 sections.  
9 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 66-1330, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   66-1330. Sections 66-1330 to 66-1348 and section 7 of  
4 this act shall be known and may be cited as the Ethanol Development  
5 Act.

6                   Sec. 2. Section 66-1344, Revised Statutes Supplement,  
7 2000, is amended to read:

8                   66-1344. (1) Any ethanol facility which is not in  
9 production on or before December 31, 1992, but which is in  
10 production at the rate of at least twenty-five percent of its name  
11 plate design capacity for the production of ethanol, before  
12 denaturing, on or before December 31, 1995, shall receive a credit  
13 of twenty cents per gallon of ethanol produced for sixty months  
14 beginning with the first month for which it is eligible to receive  
15 such credit and ending not later than December 31, 2000, if the  
16 ethanol facility maintains an average production rate of at least  
17 twenty-five percent of its name plate design capacity for at least  
18 six months after the first month for which it is eligible to  
19 receive such credit.

20                   (2) Any ethanol facility eligible for a credit under  
21 subsection (1) of this section shall also receive a credit of  
22 twenty cents per gallon of ethanol produced in excess of the  
23 original name plate design capacity which results from expansion of  
24 the facility completed on or before December 31, 1995. Such credit  
25 shall be for sixty months beginning with the first month for which  
26 production from the expanded facility is eligible to receive such  
27 credit and ending not later than December 31, 2000.

28                   (3) Beginning June 1, 2000, during such period as funds

1 remain in the Ethanol Production Incentive Cash Fund, any ethanol  
2 facility shall receive a credit of seven and one-half cents per  
3 gallon of ethanol, before denaturing, for new production for a  
4 period not to exceed thirty-six consecutive months. For purposes  
5 of this subsection, new production means production which results  
6 from a new facility, ~~a facility which has not received credits~~  
7 ~~prior to June 1, 1999, or~~ the expansion of an existing facility's  
8 capacity by at least two million gallons first placed into service  
9 after June 1, 1999, as certified by the facility's design engineer  
10 to the Department of Revenue. For expansion of an existing  
11 facility's capacity, new production means production in excess of  
12 the average of the highest three months of ethanol production at an  
13 ethanol facility during the twenty-four-month period immediately  
14 preceding certification of the facility by the design engineer. No  
15 credits shall be allowed under this subsection for expansion of an  
16 existing facility's capacity until production is in excess of  
17 twelve times the three-month average amount determined under this  
18 subsection during any twelve-consecutive-month period beginning no  
19 sooner than June 1, 2000. New production shall be approved by the  
20 Department of Revenue based on such ethanol production records as  
21 may be necessary to reasonably determine new production. Ethanol  
22 production eligible for credits under this subsection shall be  
23 measured by a device approved by the Division of Weights and  
24 Measures of the Department of Agriculture. Confirmation of  
25 approval by the division shall be provided by the ethanol facility  
26 at the time the initial claim for credits provided under this  
27 subsection is submitted to the Department of Revenue. This credit  
28 must be earned on or before December 31, 2003.

1           (4)(a) Beginning January 1, 2002, any new ethanol  
2 facility which is in production at the minimum rate of one hundred  
3 thousand gallons annually for the production of ethanol, before  
4 denaturing, on or before June 30, 2004, shall receive a credit of  
5 eighteen cents per gallon of ethanol produced for ninety-six  
6 consecutive months beginning with the first calendar month for  
7 which it is eligible to receive such credit and ending not later  
8 than June 30, 2012, if the facility is defined by subdivision  
9 (b)(i) of this subsection, and for forty-eight consecutive months  
10 beginning with the first calendar month for which it is eligible to  
11 receive such credit and ending not later than June 30, 2008, if the  
12 facility is defined by subdivision (b)(ii) of this subsection.

13           (b) For purposes of this section, a new ethanol facility  
14 means an ethanol facility which (i) is not in production on or  
15 before the effective date of this act or (ii) has not received  
16 credits prior to June 1, 1999.

17           (c) Not more than fifteen million six hundred twenty-five  
18 thousand gallons of ethanol produced annually at an ethanol  
19 facility shall be eligible for credits under this subsection. Not  
20 more than one hundred twenty-five million gallons of ethanol  
21 produced at an ethanol facility by the end of the  
22 ninety-six-consecutive-month period or  
23 forty-eight-consecutive-month period set forth in this subsection  
24 shall be eligible for credits under this subsection.

25           (5) The credits described in this section shall be given  
26 only for ethanol produced at a plant in Nebraska at which all  
27 fermentation, distillation, and dehydration takes place. No credit  
28 shall be given on ethanol produced for or sold for use in the

1 production of ~~distilled spirits~~ beverage alcohol. Not more than  
2 twenty-five million gallons of ethanol produced annually at an  
3 ethanol facility shall be eligible for the credits in subsections  
4 (1) and (2) of this section, and the credits may only be claimed by  
5 a producer for the periods specified in subsections (1) and (2) of  
6 this section. Not more than ten million gallons of ethanol  
7 produced during any twelve-consecutive-month period at an ethanol  
8 facility shall be eligible for the credit described in subsection  
9 (3) of this section. ~~7 and the credit may only be claimed by a~~  
10 ~~producer for the periods specified in subsection (3) of this~~  
11 ~~section.~~ Not more than one hundred twenty-five million gallons of  
12 ethanol produced at an ethanol facility by the end of the  
13 sixty-month period set forth in subsection (1) or (2) of this  
14 section shall be eligible for the credit under such subsection. An  
15 ethanol facility which receives a credit for ethanol produced under  
16 subsection (1) or (2) of this section shall not receive a credit  
17 under subsection (3) of this section until its eligibility to  
18 receive a credit under subsection (1) or (2) has been completed.  
19 ~~During any fiscal year, if the amount of money in the fund is not~~  
20 ~~sufficient to pay all the credits applied for under this section~~  
21 ~~during such year, each applicant shall receive a proportionate~~  
22 ~~share of the amount in the fund equal to the portion derived by~~  
23 ~~dividing the amount in the fund by the aggregate number of gallons~~  
24 ~~eligible for the credit for all applicants.~~ The credits described  
25 in this section shall be in the form of a nonrefundable,  
26 transferable motor vehicle fuel tax credit certificate.

27 ~~(5)~~ (6) The Department of Revenue shall prescribe an  
28 application form and procedures for claiming credits under this

1 section.

2           ~~(6)~~ (7) For purposes of ascertaining the correctness of  
3 any application for claiming a credit provided in this section, the  
4 Tax Commissioner (a) may examine or cause to have examined, by any  
5 agent or representative designated by him or her for that purpose,  
6 any books, papers, records, or memoranda bearing upon such matters,  
7 (b) may by summons require the attendance of the person responsible  
8 for rendering the application or other document or any officer or  
9 employee of such person or the attendance of any other person  
10 having knowledge in the premises, and (c) may take testimony and  
11 require proof material for his or her information, with power to  
12 administer oaths or affirmations to such person or persons. The  
13 time and place of examination pursuant to this subsection shall be  
14 such time and place as may be fixed by the Tax Commissioner and as  
15 are reasonable under the circumstances. In the case of a summons,  
16 the date fixed for appearance before the Tax Commissioner shall not  
17 be less than twenty days from the time of service of the summons.  
18 No taxpayer shall be subjected to unreasonable or unnecessary  
19 examinations or investigations. All records obtained pursuant to  
20 this subsection shall be subject to the confidentiality  
21 requirements and exceptions thereto as provided in section  
22 77-27,119.

23           Sec. 3.     Section 66-1345, Revised Statutes Supplement,  
24 2000, is amended to read:

25           66-1345.   (1) There is hereby created the Ethanol  
26 Production Incentive Cash Fund which shall be used by the board to  
27 pay the credits created in section 66-1344 to the extent provided  
28 in this section. Any money in the fund available for investment

1 shall be invested by the state investment officer pursuant to the  
2 Nebraska Capital Expansion Act and the Nebraska State Funds  
3 Investment Act. The State Treasurer shall transfer to the Ethanol  
4 Production Incentive Cash Fund such money as shall be (a)  
5 appropriated to the Ethanol Production Incentive Cash Fund by the  
6 Legislature, (b) given as gifts, bequests, grants, or other  
7 contributions to the Ethanol Production Incentive Cash Fund from  
8 public or private sources, (c) made available due to failure to  
9 fulfill conditional requirements pursuant to investment agreements  
10 entered into prior to April 30, 1992, (d) received as return on  
11 investment of the Ethanol Authority and Development Cash Fund, (e)  
12 credited to the Ethanol Production Incentive Cash Fund from the  
13 fertilizer fee pursuant to section 77-4401, (f) credited to the  
14 Ethanol Production Incentive Cash Fund from the excise taxes  
15 imposed by section 66-1345.01, and (g) credited to the Ethanol  
16 Production Incentive Cash Fund pursuant to section 66-1345.04.

17 (2) The Department of Revenue shall, at the end of each  
18 calendar month, notify the State Treasurer of the amount of motor  
19 fuel tax that was not collected in the preceding calendar month due  
20 to the credits provided in section 66-1344. The State Treasurer  
21 shall transfer from the Ethanol Production Incentive Cash Fund to  
22 the Highway Trust Fund an amount equal to such credits less the  
23 following amounts:

24 (a) For 1993, 1994, and 1995, the amount generated during  
25 the calendar quarter by a one-cent tax on motor fuel pursuant to  
26 sections 66-489, 66-668, and 66-6,107;

27 (b) For 1996, the amount generated during the calendar  
28 quarter by a three-quarters-cent tax on motor fuel pursuant to such

1 sections;

2 (c) For 1997, the amount generated during the calendar  
3 quarter by a one-half-cent tax on motor fuel pursuant to such  
4 sections; and

5 (d) For 1998 ~~through 2004~~ and each year thereafter, no  
6 reduction.

7 ~~The amounts shall be transferred through June 30, 2004.~~  
8 For 1993 through 1997, if the amount generated pursuant to  
9 subdivisions (a), (b), and (c) of this subsection and the amount  
10 transferred pursuant to subsection (1) of this section are not  
11 sufficient to fund the credits provided in section 66-1344, then  
12 the credits shall be funded through the Ethanol Production  
13 Incentive Cash Fund but shall not be funded through either the  
14 Highway Cash Fund or the Highway Trust Fund. For 1998 ~~through 2004~~  
15 and each year thereafter, the credits provided in such section  
16 shall be funded through the Ethanol Production Incentive Cash Fund  
17 but shall not be funded through either the Highway Cash Fund or the  
18 Highway Trust Fund.

19 (3) The State Treasurer shall transfer from the Ethanol  
20 Production Incentive Cash Fund to the Management Services Expense  
21 Revolving Fund the amount reported under subsection (4) of section  
22 66-1345.02 for each calendar month of the fiscal year as provided  
23 in such subsection.

24 (4) ~~The board shall monitor all receipts to and~~  
25 ~~reimbursements from the Ethanol Production Incentive Cash Fund and~~  
26 ~~notify the Department of Revenue prior to the beginning of the~~  
27 ~~fiscal year in which the board projects that there will be~~  
28 ~~insufficient funds available within the fund to satisfy all valid~~



1 ethanol production credit claims submitted pursuant to section  
2 ~~66-1344.~~

3           ~~(5)~~ On ~~June 30, 2004~~ December 31, 2012, the State  
4 Treasurer shall transfer one-half of the unexpended and unobligated  
5 funds from the Ethanol Production Incentive Cash Fund to the  
6 Nebraska Corn Development, Utilization, and Marketing Fund and  
7 Grain Sorghum Development, Utilization, and Marketing Fund in the  
8 same proportion as funds were collected pursuant to section  
9 66-1345.01 from corn and grain sorghum. The Department of  
10 Agriculture shall assist the State Treasurer in determining the  
11 amounts to be transferred to the funds. The remaining one-half of  
12 the unexpended and unobligated funds shall be transferred to the  
13 General Fund.

14           (5) Whenever the unobligated balance in the Ethanol  
15 Production Incentive Cash Fund exceeds fifteen million dollars, the  
16 Department of Revenue shall notify the Department of Agriculture at  
17 which time the Department of Agriculture shall suspend collection  
18 of the excise tax levied pursuant to section 66-1345.01. If, after  
19 suspension of the collection of such excise tax, the balance of the  
20 fund falls below eight million dollars, the Department of Revenue  
21 shall notify the Department of Agriculture which shall resume  
22 collection of the excise tax.

23           (6) On or before December 1, 2003, and each December 1  
24 thereafter, the Department of Revenue and the Nebraska Ethanol  
25 Board shall jointly submit a report to the Legislature which shall  
26 project the anticipated revenue and expenditures from the Ethanol  
27 Production Incentive Cash Fund through the termination of the  
28 ethanol production incentive programs pursuant to section 66-1344.

1 The initial report shall include a projection of the amount of  
2 ethanol production for which the Department of Revenue has entered  
3 agreements to provide ethanol production credits pursuant to  
4 section 7 of this act and any additional ethanol production which  
5 the Department of Revenue and the Nebraska Ethanol Board reasonably  
6 anticipate may qualify for credits pursuant to section 66-1344.

7           Sec. 4. Section 66-1345.01, Revised Statutes Supplement,  
8 2000, is amended to read:

9           66-1345.01. An excise tax is levied upon all corn and  
10 grain sorghum sold through commercial channels in Nebraska or  
11 delivered in Nebraska. For any sale or delivery of corn or grain  
12 sorghum occurring on or after July 1, 1995, and before January 1,  
13 2000, the tax is three-fourths cent per bushel for corn and  
14 three-fourths cent per hundredweight for grain sorghum. For any  
15 sale or delivery of corn or grain sorghum occurring on or after  
16 January 1, 2000, and before January 1, 2001, the tax is one-half  
17 cent per bushel for corn and one-half cent per hundredweight for  
18 grain sorghum. For any sale or delivery of corn or grain sorghum  
19 occurring on or after October 1, 2001, and before October 1, 2009,  
20 the tax is one-half cent per bushel for corn and one-half cent per  
21 hundredweight for grain sorghum. The tax shall be in addition to  
22 any fee imposed pursuant to sections 2-3623 and 2-4012. The  
23 Legislature finds and declares that those in production agriculture  
24 have contributed sufficiently to support the Ethanol Production  
25 Incentive Cash Fund by the imposition of the excise tax. If  
26 additional funds are needed in the future to meet the Legislature's  
27 obligation to fully fund the Ethanol Production Incentive Cash  
28 Fund, those funds should come from sources other than production

1 agriculture.

2           The excise tax shall be imposed at the time of sale or  
3 delivery and shall be collected by the first purchaser. The tax  
4 shall be collected, administered, and enforced in conjunction with  
5 the fees imposed pursuant to sections 2-3623 and 2-4012. The tax  
6 shall be collected, administered, and enforced by the Department of  
7 Agriculture. No corn or grain sorghum shall be subject to the tax  
8 imposed by this section more than once.

9           In the case of a pledge or mortgage of corn or grain  
10 sorghum as security for a loan under the federal price support  
11 program, the excise tax shall be deducted from the proceeds of such  
12 loan at the time the loan is made. If, within the life of the loan  
13 plus thirty days after the collection of the excise tax for corn or  
14 grain sorghum that is mortgaged as security for a loan under the  
15 federal price support program, the grower of the corn or grain  
16 sorghum so mortgaged decides to purchase the corn or grain sorghum  
17 and use it as feed, the grower shall be entitled to a refund of the  
18 excise tax previously paid. The refund shall be payable by the  
19 department upon the grower's written application for a refund. The  
20 application shall have attached proof of the tax deducted.

21           The excise tax shall be deducted whether the corn or  
22 grain sorghum is stored in this or any other state. The excise tax  
23 shall not apply to the sale of corn or grain sorghum to the federal  
24 government for ultimate use or consumption by the people of the  
25 United States when the State of Nebraska is prohibited from  
26 imposing such tax by the Constitution of the United States and laws  
27 enacted pursuant thereto.

28           Sec. 5. Section 66-1345.02, Revised Statutes Supplement,

1 2000, is amended to read:

2           66-1345.02. (1) The first purchaser, at the time of sale  
3 or delivery, shall retain the excise tax as provided in section  
4 66-1345.01 and shall maintain the necessary records of the excise  
5 tax for each sale or delivery of corn or grain sorghum. Records  
6 maintained by the first purchaser shall provide (a) the name and  
7 address of the seller or deliverer, (b) the date of the sale or  
8 delivery, (c) the number of bushels of corn or hundredweight of  
9 grain sorghum sold or delivered, and (d) the amount of excise tax  
10 retained on each sale or delivery. The records shall be open for  
11 inspection and audit by authorized representatives of the  
12 Department of Agriculture during normal business hours observed by  
13 the first purchaser.

14           (2) The first purchaser shall render and have on file  
15 with the department by the last day of each January, April, July,  
16 and October on forms prescribed by the department a statement of  
17 the number of bushels of corn and hundredweight of grain sorghum  
18 sold or delivered in Nebraska. At the time the statement is filed,  
19 the first purchaser shall pay and remit to the department the  
20 excise tax.

21           (3) The department shall remit the excise tax collected  
22 to the State Treasurer for credit to the Ethanol Production  
23 Incentive Cash Fund within thirty days after the end of each  
24 quarter.

25           (4) ~~For each fiscal year beginning with fiscal year~~  
26 ~~1995-96 through fiscal year 2000-01, the~~ The department shall  
27 calculate its costs in collecting and enforcing the excise tax  
28 imposed by section 66-1345.01 and shall report such costs to the

1 Department of Administrative Services within thirty days after the  
2 end of the fiscal year. Sufficient funds to cover such costs shall  
3 be transferred from the Ethanol Production Incentive Cash Fund to  
4 the Management Services Expense Revolving Fund at the end of each  
5 calendar month. Funds shall be transferred upon the receipt of a  
6 report of costs incurred by the Department of Agriculture for the  
7 previous calendar month by the Department of Administrative  
8 Services.

9 Sec. 6. Section 66-1345.04, Revised Statutes Supplement,  
10 2000, is amended to read:

11 66-1345.04. (1) The State Treasurer shall transfer from  
12 the General Fund to the Ethanol Production Incentive Cash Fund, on  
13 or before the end of each of fiscal years 1995-96 and 1996-97,  
14 \$8,000,000 per fiscal year.

15 (2) It is the intent of the Legislature that the  
16 following General Fund amounts be appropriated to the Ethanol  
17 Production Incentive Cash Fund in each of the following years:

18 (a) For each of fiscal years 1997-98 and 1998-99,  
19 \$7,000,000 per fiscal year;

20 (b) For fiscal year 1999-2000, \$6,000,000; ~~and~~

21 (c) For fiscal year 2000-01, \$5,000,000; and

22 (d) For each of fiscal years 2001-02 through 2007-08,  
23 \$1,500,000.

24 Sec. 7. The Tax Commissioner and the producer eligible  
25 to receive credits under subsection (4) of section 66-1344 shall  
26 enter into a written agreement. The producer shall agree to  
27 produce ethanol at the designated facility and any expansion  
28 thereof. The Tax Commissioner, on behalf of the State of Nebraska,

1 shall agree to furnish the producer the tax credits as provided by  
2 and limited in section 66-1344 in effect on the date of the  
3 agreement. The agreement to produce ethanol in return for the  
4 credits shall be sufficient consideration, and the agreement shall  
5 be binding upon the state. No credit shall be given to any  
6 producer of ethanol which fails to produce ethanol in Nebraska in  
7 compliance with the agreement. The agreement shall include:

8 (1) The name of the producer;

9 (2) The address of the ethanol facility;

10 (3) The date of the initial eligibility of the ethanol  
11 facility to receive such credits;

12 (4) The name plate design capacity of the ethanol  
13 facility as of the date of its initial eligibility to receive such  
14 credits; and

15 (5) The name plate design capacity which the facility is  
16 intended to have after the completion of any proposed expansion.  
17 If no expansion is contemplated at the time of the initial  
18 agreement, the agreement may be amended to include any proposed  
19 expansion.

20 Sec. 8. Original section 66-1330, Reissue Revised  
21 Statutes of Nebraska, and sections 66-1344 to 66-1345.02 and  
22 66-1345.04, Revised Statutes Supplement, 2000, are repealed.